

Making wild law work - the role of 'connection with nature' and education in developing an ecocentric property law

Article (Accepted Version)

Howe, Helena R (2016) Making wild law work - the role of 'connection with nature' and education in developing an ecocentric property law. *Journal of Environmental Law*, 29 (1). pp. 19-45. ISSN 0952-8873

This version is available from Sussex Research Online: <http://sro.sussex.ac.uk/id/eprint/61366/>

This document is made available in accordance with publisher policies and may differ from the published version or from the version of record. If you wish to cite this item you are advised to consult the publisher's version. Please see the URL above for details on accessing the published version.

Copyright and reuse:

Sussex Research Online is a digital repository of the research output of the University.

Copyright and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable, the material made available in SRO has been checked for eligibility before being made available.

Copies of full text items generally can be reproduced, displayed or performed and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

MAKING WILD LAW WORK – THE ROLE OF ‘CONNECTION WITH NATURE’ AND EDUCATION IN DEVELOPING AN ECOCENTRIC PROPERTY LAW

Helena R. Howe*

Abstract

Framed against the background of anthropocentric and ecocentric values, the specific themes of the article are located in the developing discourse of Earth Jurisprudence and Wild Law. Critically, the article argues that connection with nature – and specifically, with land - underpins any transformation of property law from an anthropocentric, individualist concept to a more ecocentric and relational one. It draws upon evidence from psychology, sociology and environmental education to demonstrate that connection with nature is central to fostering a Wild Law of property. The article then addresses how such connections can be developed by education, focusing upon the experiences and opportunities offered by initiatives such as Forest School and suggesting these represent emerging forms of Wild Education.

Keywords

‘connection with nature’, ‘ecocentric’, ‘Wild Law’, ‘Forest School’, ‘property law’, ‘relational theory’

1. Introduction

Drawing on the literature developing an ‘Earth jurisprudence’ and ‘Wild Law’ perspective on law and governance¹, this article explores the significance of human connection with nature and its role in

* Thanks to Jo Bridgeman, Bonnie Holligan, Donald McGillivray, Alastair Hudson, Malcolm Ross and the anonymous reviewers. The usual disclaimers apply.

¹ Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (Green Books 2011); Peter Burdon, ‘Wild Law: The Philosophy of Earth Jurisprudence’ (2010) 35 *Alt LJ* 62; Peter Burdon (ed.), *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press 2011) (and various chapters therein); Peter D. Burdon, ‘The Earth

achieving a Wild Law of property. Part 2 begins by establishing that an essential feature of Earth Jurisprudence is the rejection of an anthropocentric approach to nature's value in favour of an ecocentric perspective.² Thus, central to an alternative concept of law and governance envisioned by Earth Jurisprudence – one which places the ecological integrity of the Earth at its heart - is a shift in the way we value the natural world. Part 3 explores the main features of a Wild Law of property. For the majority of people in industrialised societies, a move to an ecocentric, relational concept of property as envisaged by Wild Law requires a different narrative about our relationship with nature; one in which we are interdependent with nature, rather than separate and dominant.³ Accordingly, part 4 argues that 'connection with nature' is a fundamental component of the transition to a Wild Law of property. Whilst lacking a single agreed definition,⁴ 'connection with nature' broadly expresses the idea of an emotional and empathic relationship with the rest of the natural world and a perception

Community and Ecological Jurisprudence' Oniati Socio-Legal Series [online] 3 (2013) 815-837; Michelle Maloney and Peter Burdon (eds.), *Wild Law – In Practice* (Routledge 2014); Jamie Murray, Earth Jurisprudence, Wild Law, Emergent Law: The Emerging Field of Ecology and Law – Part 1 (2014) 35 *Liverpool Law Rev* 215-231; Jamie Murray, Earth Jurisprudence, Wild Law, Emergent Law: The Emerging Field of Ecology and Law – Part 2 (2015) 36 *Liverpool Law Rev* 105-122; Peter D. Burdon, *Earth Jurisprudence, Private Property and the Environment* (Routledge 2015)

² Burdon 2015 (n 1) 101

³ A view recently expressed by Naomi Klein, *This Changes Everything* (Penguin 2015) 4 but with roots in work such as Aldo Leopold, *A Sand County Almanac: And Sketches Here and There* (originally published 1949, OUP 1968) and Carol Merchant, *The Death of Nature: Women, Ecology and the Scientific Revolution* (HarperCollins 1980)

⁴ Paul Sparks, Joe Hinds, Susan Curnock, Louisa Pavey, 'Connectedness and its consequences: a study of relationships with the natural environment' (2014) 44 *Journal of Applied Social Psychology* 166-174

of interdependence.⁵ Although connection with nature has been well explored in psychology, sociology and environmental education fields and political and philosophical literature,⁶ there has been limited attempt to promote its legal significance. Thus the concept is not used here in its more usual guise as a motivator for *individual* environmental action, such as recycling, rather its significance is located in the context of broader, *structural*, legal change. Whilst adults in industrial societies bear responsibility for biospheric destabilisation and promotion of more sustainable policies, effective Wild legal reform will require the input of several generations.⁷ Part 5 therefore focuses on the way appropriate educational initiatives for children and young people can foster connection with nature and promote the ‘ecological intelligence’⁸ needed for a Wild Law of property to flourish. Rather than use connection with nature as a lens through which to conduct a traditional analysis of property rules, the article aims to do something different: to explore the strategic role of connection with nature in reforming property law and propose practical approaches to developing the connections on which this reform is predicated.

⁵ Explored below at 4.1 and known by various names including: ‘connection to nature’, ‘nature connectedness’, ‘love and care for nature’, see for example, Brian Restall and Elisabeth Conrad, ‘A literature review of connectedness to nature and its potential for environmental management’ (2015) 159 *Journal of Environmental Management* 264-278 and Matthew J. Zylstra, Andrew T. Knight, Karen J. Esler, Lesley L. L. Le Grange, ‘Connectedness as a Core Conservation Concern: An Interdisciplinary Review of Theory and a Call for Practice’ (2014) 2 *Springer Science Reviews* 119-143. I have chosen ‘connection *with* nature’ for similar reasons to Zylstra et al, i.e. recognising that human beings are part of nature and not separate.

⁶ For example, Warwick Fox, *Toward a Transpersonal Ecology: Developing New Foundations for Environmentalism* (Shambhala Publications 1990); Robyn Eckersley, *Environmentalism and Political Theory* (UCL Press 1992) and sections 2 and 3 below.

⁷ Cullinan (n 1); Erin Fitz-Henry, ‘Decolonizing personhood’ in Burdon 2014 (n 1) 135

⁸ Jane Holder, ‘Identifying Points of Contact and Engagement Between Legal and Environmental Education’ (2013) 40 *Journal of Law and Society* 541

2. Earth Jurisprudence and approaches to nature's value

2.1 Anthropocentric and ecocentric notions of value

The way we value nature matters because this influences our individual behaviours, motivations and action vis a vis the natural world.⁹ But, perhaps more importantly, it also impacts on how we structure our responses to environmental issues, the priority we accord to the natural world in decision making and the mechanisms we employ to ensure its protection.¹⁰ As people's relationship to nature differ, so do their understandings of why we should care about nature. The concepts discussed here – 'nature' and 'value' – are slippery, complex and contested. However, for present purposes I contrast a standard anthropocentric perspective on nature's value with a similarly standard presentation of an ecocentric perspective. I do not engage in debates regarding the philosophical robustness or implications of these approaches. Rather, I explain what these concepts mean for the argument pursued in this article and why an anthropocentric approach to nature's value is problematic from a legal perspective. By 'nature' or the 'natural world' I mean all biotic and abiotic life in the biosphere and geological landforms.¹¹ Like notions of value, 'nature' is largely a culturally constructed concept. Whilst recognising this, and calls to transcend the strictures of this tradition,¹² this article is inevitably informed by the nature/culture divide in Western thought, given I am writing within - and speaking to

⁹ See below 4.1

¹⁰ Luke Martell, *Ecology and Society: an introduction* (Polity Press 1994) 77; Elizabeth Fisher, Bettina Lange and Eloise Scotford, *Environmental Law* (OUP 2013) 52

¹¹ Drawing on Zylstra et al (n 5) 121

¹² For example, Affrica Taylor, *Reconfiguring the Natures of Childhood* (Routledge 2013); Karen Malone, 'Theorizing a child-dog encounter in the slums of La Paz using post-humanistic approaches in order to disrupt universalisms in current 'child in nature' debates', *Children's Geographies* (2015) 1-18; Nicole Graham, *Landscape: Law, Property, Environment* (Routledge 2011)

lawyers immersed in - this tradition. However, as befits an argument focused on the interdependence of humans and the rest of nature, I am generally seeking to locate humans as part of nature, not separate from it. Nevertheless, there is often an almost inevitable duality in the meanings that I ascribe to the term, such that 'nature' also has to stand for the biophysical environment *without* humans. This is because, as Zylstra et al note, discussions of connection and disconnection from nature pre-suppose a separation.¹³ Hence, whilst seeking to move beyond this separation I cannot avoid rehearsing it to some extent.

Dobson sets out the basic position in Western societies regarding the value we ascribe to nature and approaches which tend to dominate.¹⁴ According to Dobson:

'[Approaches to why we care about the environment] can be summarized under two headings: those that suggest that human beings ought to care for the environment because it is in our interest to do so, and those that suggest that the environment has an intrinsic value in the sense that its value is not exhausted by its being a means to human ends – and even if it cannot be made a means to human ends it still has value. Most of the time we encounter arguments of the first sort...' ¹⁵

This passage identifies the anthropocentric and ecocentric approaches to valuing nature. The former places humans as separate from the rest of the natural world but at its 'imagined centre'.¹⁶ In essence, nature's value is seen in terms of its human benefit; its value lying in its role as a resource, useful for 'maintaining and enhancing the quality of life for humans'. From this perspective, benefits derived

¹³ Zylstra et al (n 5) 121

¹⁴ Andrew Dobson, *Green Political Thought* (Routledge 2000); John Alder and David Wilkinson, *Environmental Law and Ethics* (Macmillan 1999) 48 (on the 'basic division')

¹⁵ Dobson (n 14) 18

¹⁶ Graham (n 12) 4

from nature are commensurable with other types of benefit and frequently ascribed monetary value.¹⁷ Whereas, an ecocentric approach is based on the 'assumption that all life is interdependent and that human beings are part of a wider whole.'¹⁸ From the latter perspective, nature is not a commodity belonging to us to be valued instrumentally, rather it is a community to which we belong, with some degree of intrinsic value.¹⁹

This outline of anthropocentric and ecocentric notions of nature's value cannot accommodate all the rich and diverse representations of these concepts in the literature²⁰ and the multidimensional character of 'value'.²¹ Nevertheless, the point here is that, as the dominant perspective on nature's value in the Western legal tradition,²² the anthropocentric approach is problematic. It is in conflict with both modern scientific understandings in which humans are interdependent with the rest of the natural world²³ and the more integrated relationship with nature which characterises many communities' perspective. Ecology has presented us with the concept of an ecological community in

¹⁷ Suzanne C. Gagnon Thompson & Michelle A. Barton, 'Ecocentric and anthropocentric attitudes towards the environment' (1994) 14 *Journal of Environmental Psychology* 149-157, 149.

¹⁸ Alder and Wilkinson (n 14) 62

¹⁹ The Hon. Justice Brian J. Preston, 'Internalizing ecocentrism' in Maloney and Burdon (n 1) 75. Discussion of the complexity surrounding 'intrinsic' value is beyond the scope of this article, see Dobson (n 14).

²⁰ See further, Vito De Lucia, 'Competing Narratives and Complex Genealogies: The Ecosystem Approach in International Environmental Law' (2015) 27 *JEL* 91-117; Alexander Gillespie, *International Environmental Law, Policy, Ethics* (2nd edn, OUP 2014); Dobson (n 14); Sean Coyle and Karen Morrow, *The Philosophical Foundations of Environmental Law: Property, Rights and Nature* (Hart Publishing 2004)

²¹ Fisher et al (n 10) 48

²² Ibid; Melesse Damtie, 'Anthropocentric and Ecocentric Versions of the Ethiopian Legal Regime', in Burdon 2011 (n 1) 159 (placing ourselves at the centre of the world not just an industrialised world tendency).

²³ Dobson (n 14) 40

which diverse organisms together comprise a functional whole through a network of relationships.²⁴ Similarly, Lovelock's Gaia Earth system hypothesis²⁵ renders unsupportable the idea of humans at the pinnacle of a hierarchy. For Berry, '...the mode of consciousness that has established a radical discontinuity between the human and other modes of being' is a root cause of our desperate environmental condition.²⁶ Such thinking contributes to a tendency to under-value and under-protect nature, in turn leading to the failure of law and governance mechanisms effectively to protect the integrity of the Earth's ecosystems.²⁷ Whilst we labour under our 'delusion of difference and separation'²⁸ we create legal frameworks that foster ecologically unsound policies and decision making and support environmentally myopic institutions, such as private property.²⁹ The tendency to treat nature as just one of several competing (economic) interests 'results in a tendency to trump more qualitative public interest notions, such as ecosystem protection, intergenerational and intragenerational equity and even cultural values.'³⁰ An anthropocentric approach to nature's value may not be the sole cause of the present environmental crisis but it is a significant factor.³¹

²⁴ Burdon 2010 (n 1)

²⁵ James Lovelock, *Gaia: A New Look at Life on Earth* (OUP 2000)

²⁶ Thomas Berry, *The Great Work*, cited in Peter D. Burdon, 'Eco-Centric Paradigm' in Burdon, 2011 (n 1) 85

²⁷ Burdon 2010 (n 1) 62-65

²⁸ Leesa Fawcett and Janet L. Dickinson, 'Psychological Resilience, Uncertainty and Biological Conservation: Junctures Between Emotional Knowledges, Nature Experiences, and Environmental Education' in Marianne E. Krasny and Justin Dillon, *Trading Zones in Environmental Education: Creating Transdisciplinary Dialogue* (Peter Lang Publishing 2013) 163

²⁹ Cullinan (n 1) 16; Burdon 2015 (n 1)

³⁰ Mark Stallworthy, *Sustainability, Land Use and Environment* (Cavendish Publishing Ltd 2002) 227

³¹ Samuel Alexander, 'Earth Jurisprudence and the Ecological Case for Degrowth' in Burdon 2011 (n 1), highlighting the neoliberal growth agenda.

2.2 Earth Jurisprudence

Recent years have seen various calls for alternative, ‘green’, models of law and governance which better reflect a more ecocentric approach to the value of nature.³² Whilst differing, they are united in pressing for a change in the ideological underpinnings, institutions and frameworks of law to enable the radical regulatory responses required by the current state of environmental crisis. The burgeoning Earth Jurisprudence movement is an example of this call for an alternative concept of law and governance for sustainability.³³ Growing out of the writings of Thomas Berry,³⁴ and associated with the work of Cullinan³⁵ and Burdon³⁶, Earth Jurisprudence is a critical legal theory defined by Filgueira and Mason as: ‘the philosophy of law and regulation that gives formal recognition to the reciprocal relationship between humans and the rest of nature’.³⁷ Law, in this theory, is conceived as central to the project of ensuring social change; only by transforming the nature and purpose of law will we alter how society actually functions.³⁸ It follows that reconceptualising the dominant

³² Aside from the literature on Earth Jurisprudence discussed below, see for example, Burns H. Weston and David Bollier, *Green Governance: Ecological Survival, Human Rights and the Law of the Commons* (CUP 2013) and Olivia Woolley, *Ecological Governance* (CUP 2014)

³³ The principles of Earth Jurisprudence are accepted here but for critical discussion see Burdon 2013 (n 1)

³⁴ For example, Thomas Berry, *The Great Work: Our Way into the Future* (Crown Publications 2000) and Thomas Berry, *Evening Thoughts: Reflecting on Earth as Sacred Community* (University of California Press 2006)

³⁵ In particular, Cullinan (n 1)

³⁶ Above, (n 1)

³⁷ Begonia Filgueira and Ian Mason, ‘Wild Law: Is There Any Evidence of Wild Law in Existing Law?’ in Burdon 2011 (n 1) 196

³⁸ Cullinan (n 1) Ch. 4

jurisprudence from human-centred to biocentric, or Earth-centred, is fundamental to ensuring that the ecological requirements of the biosphere are adequately incorporated into decision making.³⁹

Calling for a radical overhaul of institutional and regulatory structures on this basis, Earth Jurisprudence envisions the creation of 'Wild Laws' which would promote environmental justice for human and non-human. The fundamental principles underpinning Earth Jurisprudence are derived from what Berry terms the 'Great Jurisprudence', or natural laws which govern planetary functioning.⁴⁰ These include the principle that humans are members of the Earth community, or wider system of communities that comprise the planet,⁴¹ and are dependent upon the planet (or Earth) for survival. From this flows the notion that all true 'rights' (and obligations) derive from the Earth so that the needs of the Earth Community to self-regulate and flourish should be the touchstone of any human-instigated regulatory system.⁴² Whilst bio-physical laws do not lead necessarily to corresponding human laws, many Earth Jurisprudes adopt the normative perspective that 'human law ought to reflect and respect the bio-physical laws of nature.'⁴³ The new system of Earth Governance should help create an appropriate framework capable of supporting the development of a body of law flexible enough to accommodate the diversity of the Earth Community but which is compatible with essential principles. Whilst Wild Laws will need to be developed over time and appropriate to the cultures which create them, it is suggested that these substantive laws would recognise intergenerational and interspecies equity, altered notions of property⁴⁴ as well as rights of non-human

³⁹ Cullinan (n 1) 28, 58

⁴⁰ Cullinan (n 1) 78, Ch.6, although see Burdon 2015 (n 1) 80 for a differing interpretation.

⁴¹ Cullinan (n 1) 147; Burdon, 2015 (n 1) Ch. 3

⁴² Cullinan (n 1) 82

⁴³ Alexander (n 36) 293; Nicole Graham, 'Owning the Earth', in Burdon 2011 (n 1) 259

⁴⁴ See e.g Cullinan (n 1); Murray 2014 (n 1); Burdon 2015 (n 1); Erin Fitz-Henry, 'Decolonizing personhood' in Burdon 2014 (n 1) 137

nature.⁴⁵ Views as to how best to achieve these aims vary. The role of ‘grass-roots’ movements and forms of Earth Democracy in which inclusive participation is possible are, however, important and are discussed below.⁴⁶

Whilst recognising that Earth Jurisprudence is not a homogenous body of literature, Alexander identifies one of the unifying strands as the notion that ‘nature – the life support system on which the entire community of life depends – is more than a ‘resource’ to be exploited for human gratification’ and should be valued ‘primarily in terms of the role... play[ed] in maintaining the health and integrity of planetary ecosystems.’⁴⁷ In other words a central value underpinning the principles of Earth Jurisprudence is ecocentrism.⁴⁸ Until we change our thought processes – our jurisprudence – we cannot change the way we regulate our interactions with the natural world. Views may differ about the precise content of this concept, particularly the extent to which it encompasses a recognition of the intrinsic value of all nature. Yet, for Burdon, this is not a primary concern. Drawing on Bosselman,⁴⁹ he explains that, for Earth Jurisprudence, the ecocentric paradigm involves placing the notion of ecological networks and correlations – in which humans are only one part – at the centre of our thought.⁵⁰ Burdon accepts that this is not a claim to a status of moral equivalence for all forms of non-human nature but instead an attempt to shift focus from hierarchies and to recognise the value of all components of the Earth community.⁵¹ This perspective on value informs the principles on which Wild Law is based, as well as specific Wild Laws enacted to accommodate the integrity of ecosystems.

⁴⁵ Cullinan (n 1) Ch. 8; Maloney and Burdon (n 1) Part III

⁴⁶ 5.1

⁴⁷ Samuel Alexander, ‘Wild Law from Below’, in Maloney and Burdon (n 1) 37

⁴⁸ Cullinan (n 1) 53

⁴⁹ Klaus Bosselmann, *When Two Worlds Collide: Society and Ecology* (RSVP Publishing Company 1995) 7

⁵⁰ Burdon 2015 (n 1) 10,118

⁵¹ Ibid.

3. A Wild Law of Property

3.1 The liberal concept of property

One of the most interesting illustrations of proposed change within an emergent framework of Wild Laws is the radical reform of the law of property.⁵² There is a huge literature on the contribution made by a rights-based, liberal concept of private property to environmentally myopic land use decisions and the need for an alternative model of land ‘ownership’ if ecological sustainability is to be achieved.⁵³ From an Earth Jurisprudence perspective,⁵⁴ the fundamental problems with this dominant concept of private property flow from its anthropocentrism and the perception that property in land is solely concerned with power relationships between people.⁵⁵ From this perspective land is too often treated by law as a de-physicalized ‘thing’ - a commodity – divorced from its wider connections as part of the Earth community and with its ecological and social values under-

⁵² For detailed discussion see Burdon 2015 (n 1)

⁵³ See for example, Kevin Gray and Susan Francis Gray, ‘The idea of Property in Land’ in Susan Bright and John Dewar (eds.), *Land Law: Themes and Perspectives* (OUP 1998) 39-41; William N. R. Lucy and Catherine Mitchell, ‘Replacing Private Property: The Case for Stewardship’ [1996] 55 *CLJ* 566; Craig Anthony Arnold, ‘The Reconstitution of Property: Property as a Web of Interests’ (2002) 26 *Harv Envtl L Rev* 281; Joseph Singer, *Entitlement: The Paradoxes of Property* (Yale University Press 2000); David Lametti, ‘The (Virtue) Ethics of Private Property’, in Alastair Hudson (ed.) *New Perspectives on Property Law, Obligations and Restitution* (Cavendish 2004); Graham (n 12); Carl J. Circo, ‘Does Sustainability Require a New Theory of Property Rights?’ [2009] 58 *U Kan L Rev* 91, with many preferring some form of reference to ‘stewardship’ or ‘guardianship’ of land, as opposed to ‘ownership’.

⁵⁴ As with those commentators sympathetic to the Earth Jurisprudence approach, Graham (n 12)

⁵⁵ A construct associated primarily with the work of Wesley Newcombe Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (Yale University Press 1919)

represented and respected.⁵⁶ In principle, according to this conceptualization, human owners are granted extensive rights to despoil the land – to extract financial value from it regardless of the impact- to exclude others from it and to alienate it, unless prevented by a rule which restricts such actions.⁵⁷

It may be argued that law rarely requires owners to treat their land as a commodity and is in fact largely permissive as to their relationship with the land.⁵⁸ The flexibility in liberal notions of private property facilitates a wide range of ownership practices, including those which emphasise norms of responsibility and the importance of place.⁵⁹ Moreover, even within rights-based frameworks, certain characteristics of the land are treated as highly significant and ownership rights restricted accordingly. This can be seen in the designation of land for its conservation importance,⁶⁰ its suitability for recreational access land⁶¹ or for entry in an agri-environment-climate scheme,⁶² as well as in mechanisms such as restrictive covenants and easements. Nevertheless, the starting point for conceptualising ownership in the rights-based tradition is the freedom to treat the land as a source of

⁵⁶ Graham (n 12); N. Graham, 'This is Not a Thing: Land, Sustainability and Legal Education' (2014) 26 *JEL* 395-422

⁵⁷ For example, A. M. Honore, 'Ownership', in A.G. Guest (ed.) *Oxford Essays in Jurisprudence* (Clarendon Press 1961) or Singer's representation of the 'ownership' model of property in Singer (n 53)

⁵⁸ Although the Agricultural Tenancies Act 1995 is an example of apparently permissive legislation which, by facilitating short tenancies, makes the treatment of the land as an economic asset by the tenant almost inevitable.

⁵⁹ Burdon 2015 (n. 1) 133-134

⁶⁰ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7

⁶¹ For example, s.2(1) Countryside and Rights of Way Act 2000

⁶² Regulation 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development, OJ [2013] L347/487

individual wealth creation, regardless of wider Community considerations.⁶³ This, in turn, influences the shape of the rights and obligations in respect of land use, access and alienation and the practical effects of exercising these rights. Decisions about land, as Graham notes, are made on the basis of entitlement; good ecological or social reasons are rarely required.⁶⁴

Whilst a range of restrictions are placed on owners which mitigate some of the worst effects of these freedoms, there is a tendency for those limits deriving from public regulatory activity to be perceived as external limits placed on the owner's inherent entitlements, for the public good.⁶⁵ This may result in regulation which is restricted in scope and reduced in efficacy.⁶⁶ Imposing positive obligations on landowners is often particularly problematic, unless through voluntary arrangements incorporating compensation for lost profits.⁶⁷ There may be instances where payment is the most appropriate approach to achieving environmental objectives, taking equitable and pragmatic considerations into account. However, concerns persist regarding the extent to which compensating landowners for the perceived interference with their rights to despoil the land for gain is necessary to achieve environmental objectives.⁶⁸ It can be argued that this traditional, anthropocentric ideology of property is an obstacle to the acquisition of a clearer understanding as to when compensation is

⁶³ Graham (n 12) and (n 56)

⁶⁴ Graham (n 56) 400

⁶⁵ Although the degree to which this is problematic and compensation is required will vary between jurisdictions. In the US context see, for example, Joseph Sax, 'Takings, Private Property and Public Rights' (1971) 81 *Yale L. J.* 149

⁶⁶ Ibid; Graham (n 56), both commenting on property as an impediment to effective implementation of environmental and land use laws.

⁶⁷ As, for example, under s.28M Wildlife and Countryside Act 1981

⁶⁸ Chris Rodgers, *The Law of Nature Conservation* (OUP 2013), 306-310; Graham (n 12) ch. 6

appropriate and when landowners can be expected to absorb the costs of care for their land and the wider community needs it supports.

3.2 A Wild Law reconceptualization of property – a relational approach

Treating land primarily as a resource for human use fails to accommodate scientific evidence on the functioning of ecological systems and the place of humans as part of the Earth community.⁶⁹ Thus the central aim of a Wild Law of property is the replacement of the rights-based liberal concept of private property, in which land is seen as a de-physicalized object or commodity, with a more ecocentric perspective that recognises the uniqueness and ecological integrity of land.⁷⁰ Taking this approach, the legal and governance structures must reflect human interdependency with land and ensure that ‘ownership’ involves understanding and care of the land, for land is not a mere object of wealth or backdrop to rights-claims but a community of which we are an integral part. In this way, land – including the life it supports – is an important entity in any legal decision being made which affects it. Thus, under a Wild Law of property, the land becomes the recipient of the responsibilities and obligations which ownership carries as well as, potentially, the subject of rights.⁷¹ On this basis, the owner is subject to legal obligations, intrinsic to the idea of property, to use the land in accordance with the fundamental principle of the common good of the Earth community and to know, care about and respect its ecological capacities.⁷² The attributes of the land itself operate to shape the extent of the rights and responsibilities that attach to ownership,⁷³ as do the needs and interests of human society.⁷⁴ It is fundamental to a Wild Law of property that property rights would continue to be limited

⁶⁹ UN Environment Programme (UNEP), *The Fifth Global Environmental Outlook (GEO-5)* (2012)

⁷⁰ Graham (n 43); Burdon 2015 (n 1) 128-9

⁷¹ Cullinan (n 1); Burdon, 2015 (n 1)

⁷² Eric T. Freyfogle, ‘Private Rights in Nature: Two Paradigms’ in Burdon, 2011 (n 1)

⁷³ Burdon 2015 (n 1) 102

⁷⁴ *Ibid.* 108-9

by competing interests of other human beings as well as by 'integral responsibilities we have to the Earth Community.'⁷⁵

A Wild Law reconceptualization of property would involve potentially radical changes to substantive and procedural property law rules, the detail of which is not the subject of this article. What is significant is that property would be given content and form by reference to the common good of human and non-human nature. It has been interpreted as involving limited rights of use, exclusion and alienation granted to owners combined with obligations and responsibilities to take account of the interests of the wider Earth Community in the exercise of those rights.⁷⁶ The obligations might be framed in terms of giving *priority* to the interests of the Earth community or having *regard* to those interests, depending on the context. As such, a Wild Law of property is likely to involve a baseline obligation to respect the ecological integrity of all land. This might involve, for example, the extension of the requirement that land is kept in good agricultural and environmental condition from just those in receipt of subsidies under the EU Common Agricultural Policy to all those in possession of farmland.⁷⁷ However, a Wild Law of property is also likely to involve additional responsibilities attaching to plots, on the basis of ecological or social value. Significantly, these responsibilities would arise even where land is not a designated for conservation on the basis of a particular feature, or enrolled in an agri-environment-climate scheme. If land supports (or may be capable of supporting) ecologically significant habitats and species – such as wetland, heathland and mixed woodland - or has an important role in promoting human well-being and relationship with nature– such as a park or urban school playing field – rights to develop or dispose of that land may be substantially restricted, where the exercise of such rights would conflict with these interests. Challenges to implementation include the differentiation required in the law to take account of the uniqueness of different plots of

⁷⁵ Ibid. 119

⁷⁶ Ibid. 107

⁷⁷ Rodgers (n 68) 308

land, in terms of ecosystem capacity or access requirements, for example.⁷⁸ In this way, there is much in common between a ‘wild’ reconceptualization of property and notions of ‘stewardship’ or similar, albeit perhaps that Wild Law places greater emphasis on the importance of our interdependency with a non-human community, and our *feeling* this interdependency if we are to respect and care adequately for land, than is seen in much property discourse.⁷⁹

Unlike the liberal concept of property, which invites us to live as though we were alone,⁸⁰ a Wild Law of property presents – and is underpinned by – a more relational perspective on the law relating to land.⁸¹ At a fundamental level, relational theory emphasises the fact of relationship; that life is comprised of a complex web of relations in which we are dependent on others and the law can only effectively protect the interests or well-being of a person (or other legal subject) where it takes account of those relationships.⁸² Whilst often this is discussed in terms of humans as social beings, it has been broadened by some theorists to encompass the interdependence of humans with the wider natural world which, for Nedelsky, is a relationship neglected by law.⁸³ A Wild Law of property, for example, holds that humans understand that they play a part in a wider ecological whole and they must exercise rights over the land in ways which respect the ecological sustainability of that whole. This is not just a sense of interdependence with non-human nature, although this is vital. Property, on this view, is a social relationship which shapes human interaction. The significance of property to the

⁷⁸ Although this is already a feature of private and public law relating to land to some extent, for example freehold covenants and designation in accordance with the Habitats Directive (n 60)

⁷⁹ Burdon 2015 (n 1) 106; Cf. n 53

⁸⁰ Singer (n 53)

⁸¹ Burdon 2015 (n 1)

⁸² Jennifer Nedelsky, *Law's Relations: a relational theory of self, autonomy, and law* (OUP 2012)

⁸³ Nedelsky (n 82) 34; Jenny Ritchie, ‘Sustainability and Relationality Within Early Childhood Care and Education Settings in Aotearoa New Zealand’ (2013) 45 *IJEC* 307-326

development or protection of autonomy, identity and freedom is recognised but it is interpreted as socially situated and thus as involving obligations to others who may need to use or access the land.⁸⁴

Closely bound together with the idea of relationality, is the fundamental role of care in relational theory and in a Wild Law of property. From a relational perspective, once relationships of dependence are recognised as central, so care must also be taken seriously.⁸⁵ Whilst this ethic of care tends to focus on human care-giver and dependent, some argue that it can be extended beyond care for other people to care for the natural world.⁸⁶ In this way, humans may be seen to care for land and nature as a parent for a child because the well-being of both is affected by the caring; the dependent has its own intrinsic interest in survival and the care-giver's own needs are met by that caring.⁸⁷ Effective caring relations are characterised by a desire by the care-giver to acquire greater knowledge and understanding of the best ways to fulfil their obligations. Driven by empathy with the cared-for, the carer seeks to listen to the former's needs and find ways of meeting them.⁸⁸ Thus, where the regulation of a relationship is approached by recognising dependence or interdependence, informed care is more likely to be an anticipated and appreciated feature of that system. Similarly for a Wild Law of property. A property owner is expected to have knowledge of ecological systems at the landscape scale or wider, as well as of the ecosystem capacities of the land under their control or care. Unlike the liberal position, owners under a Wild Law of property are obliged to exercise their rights to

⁸⁴ Burdon 2015 (n 1) 108-110; Jennifer Nedelsky, 'Reconceiving Rights and Constitutionalism' (2008) 7 *Journal of Human Rights* 139-173

⁸⁵ Nedelsky (n 82) 28; J. Bridgeman, *Parental Responsibility: young children and healthcare law* (CUP 2007)

⁸⁶ Nel Noddings, 'Global Citizenship: Promises and Problems' in Nel Noddings (ed.) *Educating Citizens for Global Awareness* (Teachers College Press 2005) cited in Ritchie (n 83)

⁸⁷ Nedelsky (n 82) 30

⁸⁸ Nel Noddings, 'Moral Education in an Age of Globalization' (2010) 42 *Educational Philosophy and Theory* 390-396

use, exclude and alienate on the basis of this knowledge and are required to defend decisions in respect of the land by reference to it. In Berry's words, 'property implies the intimate involvement of a proprietary mind – not the mind of ownership, as the term is necessarily defined by the industrial economy, but a mind possessed of the knowledge, affection, and skill appropriate to the keeping and use of its property.'⁸⁹

Moreover, this is an embodied understanding of the needs of the land. For Nedelsky, a truly relational approach to law sees people as embodied and fully integrated into their physical environment; the separation of people from the natural world being central to the neglect of this fundamental relationship.⁹⁰ For proponents of Wild Law, the exemplars of property law are often indigenous or native communities who are still very much living a physical relationship with the land, aware of the interactions between their own needs and those of the land.⁹¹ In this way, an embodied understanding of interdependence with land and nature, underpins the Wild property owners' identification with their role as a steward of the land holding inherently limited rights and responsibilities, as opposed to an owner with 'despotic dominion', and assists their ability to perform that role effectively. Furthermore, the understanding of the land which the owner possesses in the Wild Law conception of property comprises both reason and affect. This is reflected in Berry's presentation of the owner – or steward – as someone who has the necessary affection for the land and is, for Nedlesky, crucial for a fully relational approach.⁹² The role of emotion and 'special ties' with place and nature have long been marginalised in favour of reason and an abstracted perception of the

⁸⁹ Cited in Burdon 2015 (n 1) 131

⁹⁰ Nedelsky (n 82) 34

⁹¹ Cullinan (n 1), Burdon 2015 (n 1)

⁹² Nedelsky (n 82)

natural world.⁹³ However, an ecocentric value system relies on both emotion and reason as well as on close relationships with special places through which empathy and the capacity to care flourish.⁹⁴ For Wild Law, this is apparent in the intimate relationship which owners have with 'their' land, on the basis of which they are able to both care for, and make evidence-based decisions about, that land. The expectation that owners will care for the land under their control and take their responsibilities seriously flows not only from a recognition of the ecological significance of this care at a biospheric, regional and local level but because the owner has an emotional or spiritual attachment to the land.

In the words of Leopold, 'We abuse land because we regard it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to love and respect it.'⁹⁵ As with the underlying philosophy of which it is part, the development of a Wild Law of property rests on a re-conception and better appreciation of our relationship with land and nature. We need to recognise its significance for our survival but also the wider ecosystem interests it supports, and in so doing, move to ensure that our legal system promotes caring stewardship of all Earth Community members, particularly where, like land, it is much harder to hear their voice. If our anthropocentric attitude to land lies at the core of our destructive concept of property then an alternative perspective is required, one which reflects our intimate connection with land.

4. Connection with nature, Earth Jurisprudence and Wild Law

4.1 Connection with nature

⁹³ Val Plumwood, 'Nature, Self, and Gender: Feminism, Environmental Philosophy, and the Critique of Rationalism' (1991) *Hypatia* 3-27

⁹⁴ Ibid.

⁹⁵ Leopold (n 3) viii

The interdependence with the natural world on which Earth Jurisprudence and a Wild Law of property is based can be articulated through the notion of ‘connection with nature’, or human identification and affiliation with the natural environment and perception of the relationships we form with nature.⁹⁶ Connection with nature’ – and its equivalents⁹⁷ – is often used to express a love of nature. In this way, the concept is closely related to Kellert and Wilson’s biophilia hypothesis which, in its least controversial guise, suggests that humans have a need and propensity to affiliate with the natural world.⁹⁸ However, the concept is better understood as embodying the existence of symbiotic cognitive, affective - or emotional - and experiential traits in a person which, crucially, indicate a ‘sustained awareness of the interrelatedness between oneself and the rest of nature’ and an attachment to the natural world.⁹⁹ The more highly people rate the interconnection of self with nature the more likely they are to hold values towards the ecocentric end of the spectrum.¹⁰⁰ In other words, connection with nature is central to an understanding of our relationship to nature and the degree of such connection informs our values and, potentially, our behaviours.¹⁰¹ It also captures many of the relational features of human-nature interactions identified above.

At one level, acquiring a connection with nature involves deepening our understanding about the functioning of the biosphere.¹⁰² But there is more to it than acquisition of knowledge, vital though

⁹⁶ Restall and Conrad (n 5) 264

⁹⁷ Above n 5

⁹⁸ Edward O. Wilson, *Biophilia* (Harvard University Press 1984); Stephen R. Kellert and Edward O. Wilson (eds.), *The Biophilia Hypothesis* (Island Press 1993); Peter H. Kahn Jr. ‘Developmental Psychology and the Biophilia Hypothesis: Children's Affiliation with Nature’ (1997) 17 *Developmental Review* 1-61, 53

⁹⁹ Zylstra et al (n 5)

¹⁰⁰ Coral M. Bruni, Randie C. Chance and P. Wesley Schultz, Measuring Values-Based Environmental Concerns in Children: An Environmental Motives Scale’ (2012) 43 *The Journal of Environmental Education* 1-15

¹⁰¹ Gagnon-Thompson and Barton (n 17)

¹⁰² Tristan Gooley, *How to Connect with Nature* (Macmillan 2014) 9

that is. For Chawla, the notion is best expressed as taking ‘an interest in learning about the environment, feeling concern for it, and acting to conserve it, on the basis of positive experiences’.¹⁰³ Whilst this captures the broader concept and highlights important aspects, such as the significance of experiential learning in acquiring the understanding and empathy which characterises such connection, it lacks sufficient emphasis on the relational and emotional components.¹⁰⁴ These features make the existence, or otherwise, of connection to nature so significant because they relate to the internalising of our place as part of the natural world. Through connection with nature comes an ‘expanded self-construct which encompasses (and reciprocates with) all nature.’¹⁰⁵ In other words, connection involves a sense of ‘oneness’ with nature. Through this connection we acquire vital insights into our relationship with nature that are incompatible with anthropocentrism: that we are an interdependent part of a wider natural community.¹⁰⁶ Such connection thus invokes a feeling of belonging to a community of beings and also perhaps to a place, with a particular landscape and ecology;¹⁰⁷ our sense of interconnectedness with the natural world may well be strongest in the places we know best.¹⁰⁸ From this sense of unity between self and nature is derived feelings of empathy for

¹⁰³ Louise Chawla, ‘Significant Life Experiences Revisited: A Review of Research on Sources of Environmental Sensitivity’ *Journal of Environmental Education* 29 (1998) 11-21, 19

¹⁰⁴ Recognised by Chawla elsewhere, *ibid.* 12, 18

¹⁰⁵ Zylstra et al (n 5)

¹⁰⁶ Daniel D. Dutcher, James C. Finley, A. E. Luloff and Janet Buttolph Johnson, ‘Connectivity With Nature as a Measure of Environmental Values’ (2007) 39 *Environment and Behaviour* 474-493, 474, 479

¹⁰⁷ *Ibid.* 7. On the relationship between place and law see for example, Antonia Layard, ‘Shopping in the Public Realm: A Law of Place’ (2010) 37 *Journal of Law and Society* 412-441 and Antonia Layard, ‘Seeking Spatial and Environmental Justice for People and Places Within the EU’ in Andreas Philippopoulos-Mihalopoulos (ed.), *Law and Ecology: New Environmental Foundations* (Routledge 2011)

¹⁰⁸ Simon Schama, *Landscape and Memory* (Harper Press 2004); Robert MacFarlane, *Landmarks* (Hamish Hamilton 2015)

the natural world.¹⁰⁹ For Perkins, connection with nature is defined by reference to ‘deep love and care’ for nature, involving feelings of awe, wonder, interest and a closeness and interconnectedness with nature.¹¹⁰ This presents connection as something which extends well beyond the dimension of the purely rational and into the affective¹¹¹ and even spiritual realms.¹¹² Significantly, Perkins identifies many of these as sustained emotions, which evoke feelings of care, responsibility and commitment to the natural world.¹¹³

It is recognised in the Earth Jurisprudence literature that the connection with nature – or re-connection - of the majority of people in industrialised societies is fundamental to the Earth Jurisprudence project.¹¹⁴ Advocates seek to ‘foster passionate and intimate connections between people and nature...’¹¹⁵ so that we can learn (or re-learn) our place in nature and our obligations to the other members of the Earth Community.¹¹⁶ However, there seems to be little detail in the existing literature on precisely what this essential component of change means or how it is to be brought about

¹⁰⁹ Dutcher et al (n 106) 489

¹¹⁰ Helen E. Perkins, ‘Measuring Love and Care for Nature’ (2010) 30 *Journal of Environmental Psychology* 455-463

¹¹¹ Sparks et al (n 4) 167

¹¹² Perkins (n 110) 456; Dutcher et al (n 106) 490; cf. and Zylstra et al (n 5), on the difficulties of including spiritual aspects within the concept of connectedness with nature.

¹¹³ Perkins (n 110) 456

¹¹⁴ Ian Mason, ‘One In All: Principles and Characteristics of Earth Jurisprudence’, in Burdon 2011 (n 1); Cullinan (n 1) 128

¹¹⁵ Cullinan (n 1) 30

¹¹⁶ Ibid. 84

in industrialised societies.¹¹⁷ Most discussion takes place by reference to many indigenous societies' closer relationship to the land and the lessons we can learn from these communities.¹¹⁸ It is certainly instructive to consider indigenous communities for whom ecological integrity is at the heart of their systems governing interactions with nature.¹¹⁹ The experience of indigenous communities who have lived for generations without harming their natural environment tells us that a vital component of sustainable land use is the recognition of a '...reciprocal relationship which involves deep emotional, and even spiritual, connections'.¹²⁰ Whilst we can take the lesson offered from indigenous communities we will need actively to forge this connection. Developing the sense of 'oneness' with nature and of belonging to a community of beings needed to support a Wild Law of property will take time and require practical strategic endeavour.

In fostering connection with nature, two inter-related features stand out: the importance of childhood and the importance of experiences in the natural world. Spending time in nature is one of the main contributory factors to a development of a connection to nature¹²¹ and childhood experiences predominate in the literature.¹²² Being in nature is by no means the only way for children

¹¹⁷ Hoskens mentions the need for 'experiential learning processes that engage more than the rational mind' but provides no further detail, Liz Hoskens, 'Reflections on an Inter-cultural Journey into Earth Jurisprudence' in Burdon, 2011 (n 1)

¹¹⁸ Mason (n 114); Burdon 2015 (n 1); Graham (n 43); Melesse Damtie, 'Anthropocentric and Ecocentric Versions of the Ethiopian Legal Regime' in Burdon 2011 (n 1); Ng'ang'a Thiong'o, 'Earth Jurisprudence in the African Context' in Burdon, 2011 (n 1)

¹¹⁹ See for example, Ng'ang'a Thiong'o (n 118)

¹²⁰ Cullinan (n 1) 142

¹²¹ Elizabeth Kals, Daniel Suchamcher and Leo Montada, 'Emotional affinity toward nature as a motivational basis to protect nature' (1999) 31 *Environment and Behaviour* 178-202; Chawla (n 103) 19

¹²² Louise Chawla, 'Life paths into effective environmental education' *Journal of Environmental Education* 31 (1999) 15-26, 17

and young people to develop this connection.¹²³ But experiences in nature appear particularly vital, especially when they are frequent, memorable and occur in the company of significant adults who help to make those experiences meaningful to the child.¹²⁴ As a key factor in shaping understanding and values, education has a central role to play. Of particular importance, as discussed in the final section of this article, are educational initiatives which can foster this connection through experience in nature. This is particularly pressing in light of the fact, discussed below, that children in industrialised countries are struggling to spend time in natural places.¹²⁵

4.2 Connection with nature and a Wild Law of property

Spending limited time in nature is just one illustration that, despite a complex array of relationships with land, the vast majority in industrialised nations do not have the indigenous experience represented above, of lives woven into the land. Nor do we have the benefit of customary laws on which to draw in reconceiving our property laws. Yet, both the emergence of a Wild Law of property and its effective functioning requires an altered perception of our relationship with land. In this way, connection with nature – more specifically, with land - underpins the transformation of property law. Only if the relational context in which property operates in Wild Law is recognised and accepted will a Wild Law of property truly flourish. Without connection with nature humans lack the sense of interdependence that enables them to make sense of a property concept with fewer rights and significant ‘relational responsibilities’ to other members of the Community.¹²⁶ If we recognise ourselves as embedded within a network of relationships, in which our relationship with land is one,

¹²³ Julie Ernst and Stefan Theimer, ‘Evaluating the effects of environmental education programming on connectedness to nature’ (2011) *Environmental Education Research* 577-598, 595

¹²⁴ Kals et al (n 121) 196

¹²⁵ 5.2

¹²⁶ Judith E Koons, ‘Key Principles to Transform Law for the Health of the Planet’ in Burdon 2010 (n 1)

then restricted rights of use, exclusion and alienation for the benefit of those others become more likely to be accepted and followed. It is far easier to understand and accept obligations to family or friends than to an abstract entity. Indeed acts of care may be such an integral part of those relationships that they do not feel, and are not spoken of, as responsibilities or obligations.¹²⁷ Whilst connection with nature may start by experiencing a special relationship with one place it can be the foundation for an acceptance of wider ecological responsibilities.¹²⁸ It can also facilitate acquisition of the kind of knowledge on which effective stewardship is based. Traditional agriculture practised by many indigenous or native communities, for example, illustrates how an embodied and intimate understanding of the land, combined potentially with emotional or spiritual attachment, provides both motivation and long-term ability to use the land sustainably.¹²⁹ Whilst other forms of agroecology – such as biodynamics – have similar relational content and are employed for commercial purposes globally, they tend to be marginalised in many industrialised countries in favour of damaging, high input, technology-focused practices. This suggests that an important feature of sustainable land use is improving our abilities to know the ecosystems our land supports and how to care for them. Without developing this aspect of our connection, we will not have the sensitivity, understanding or commitment to make the ecologically responsible decisions about the use of land under our control required by a Wild Law of property.

But is connection with nature really necessary to make Wild Law work? It could be argued that a Wild Law of property might be accepted as a rational response to the evidence that human survival requires improved protection of ecological sustainability. Evidence-based understanding coupled with improved knowledge of ecosystem functionality might ensure the reasoned exercise of rights and

¹²⁷ Plumwood (n 93) 7

¹²⁸ Plumwood (n 93)

¹²⁹ For example, Miguel Altieri, 'Linking ecologists and traditional farmers in the search for sustainable agriculture' *Frontiers in Ecology and the Environment* 2 (2004) 35-42; Graham (n 12) Ch.6

responsibilities in respect of the land. Yet it is difficult to imagine that this would provide an environment as suited to fully accommodating a Wild Law of property as one in which emotion, embodied understanding and care are central. As Cullinan argues, the acquisition of the required 'ecological literacy' needed for the successful pursuit of the Wild Law project is based on empathy as well as scientific knowledge.¹³⁰ Although not writing in the context of Wild Law, for Plumwood disinterested rationality is an impoverished basis on which to build an ecocentric ethical theory¹³¹ and, we might add, on which to attempt the construction of laws which reflect it. Empathy and connection with others are essential to motivating and enabling the effective protection of the natural world. Moreover, the incorporation of these affective components better reflects the experiences of groups who do manage to have respectful relationships with the natural world.¹³² Feelings of care and an associated willingness to take responsibility which begin through a personal relationship with a special place are an important foundation of a wider sense of responsibility.¹³³ The simple acquisition of abstracted ecological knowledge is unlikely to be sufficient by itself to bring about the rich relationship with land which underpins Wild Law. Marginalising those aspects of relationship associated with emotion and care, may result in reluctance to develop the degree of understanding needed to make decisions regarding use, exclusion or alienation and in loss of motivation to take positive action to protect the land. Where the responsibilities to the land become onerous or inconvenient to the owner, evidence suggests that those who possess connection with nature will remain committed to fulfilling these responsibilities, whereas others may not.¹³⁴

¹³⁰ Cullinan (n 1) 128

¹³¹ Plumwood (n 93) 5

¹³² Plumwood (n 95) 7-9

¹³³ Plumwood (n 95)

¹³⁴ Gagnon Thompson and Barton (n 17) 150

4.3 The inadequate accommodation of connection in current law

In many respects, present law does not adequately reflect the importance of connection with land. Currently, connection with land – whether of the landowner or human community more generally – is unlikely to be a significant feature of land use regulation or decision-making or adequately factored into governance structures for land use.¹³⁵ So, for example, whilst farmers may demonstrate knowledge about and emotional attachment to their land,¹³⁶ these traits are often insufficiently acknowledged and utilised in legal and governance frameworks concerning agricultural land use.¹³⁷ Drawing on farmers' own expertise and commitment to the land in shaping such regulation could promote the introduction of more ecologically sound rules on land use with higher levels of support and compliance.¹³⁸ Following years of exclusive use a squatter may have a far stronger connection with the land on which they have been squatting than the paper title owner and, as such, better placed to make informed decisions about it. A family may have an enduring attachment to their home, the loss of which will cause severe emotional and even physical hardship. Nevertheless, as the law stands, it is likely to be the entitlements of the paper title holder to maintain ownership and the creditors not to be kept out of their money, secured on that family home, that take priority.¹³⁹ The

¹³⁵ Whilst the discussion here draws on UK examples, Graham uses illustrations from other jurisdictions to highlight the related issue of dephysicalized property law, Graham (n 12)

¹³⁶ See, for example, Elizabeth Gosling and Kathryn J.H. Williams, 'Connectedness to nature, place attachment and conservation behaviour: testing connectedness theory amongst farmers' (2010) 30 *Journal of Environmental Psychology* 298-304

¹³⁷ Jacquelin Burgess, Judy Clark and Carolyn M. Harrison, 'Knowledges in action: an actor network analysis of a wetland agri-environment scheme' (2000) 35 *Ecological Economics* 119-132.

¹³⁸ Ibid.

¹³⁹ See for example, the preference for protecting the 'investment' value of property, over family interests in the home in disputes over sale under s.14 Trusts of Land and Appointment of Trustees Act 1996, recently articulated in *Fred Perry (Holdings) v Genis* [2015] 1 P. & C. R. DG5 or the preference for the interests of the holder of the

connection forged with the land and the implications of that connection, in terms of improved capacity for responsible stewardship or personal harm resulting from the severance of that connection, are of limited relevance.

The current failure fully to recognise or interrogate the role of connection with land may occur through lack of means to express such connection through existing governance structures or during the process of the claim, or it may be a result of the framing of the claim in narrow, traditional legal forms such that any relevant connection to the land is side-lined. Local communities, for example, often develop a significant attachment to areas of local amenity and recreation as evidenced, in England and Wales, by disputes relating to access and registration of purported ‘village greens’.¹⁴⁰ However, the cases indicate that whilst the affective connections of adults, children and young people might be articulated in the evidence and the process, they are rarely acknowledged - and unlikely to be prioritised - in the reasoning and outcome.¹⁴¹ In this way, the claim is addressed as one relating to land but is adjudicated by reference to the relative rights to make use of the land. The significance of being in a place – the relationship – is rendered largely irrelevant and the ‘interests’ of the community in using the land are not given equal weight to the ‘rights’ of the property owner to exclude them. The law does not require that the competing claims are balanced against one another; it specifies a process in which the community is required to clear a number of hurdles, thus favouring the paper owner. Yet,

registered title over the adverse possessor of property under Schedule 6 of the Land Registration Act 2002, despite at least 10 years factual possession by the latter.

¹⁴⁰ s.15 Commons Act 2006

¹⁴¹ For example, *R. (on the application of Newhaven Port and Properties Ltd) v East Sussex CC* [2015] UKSC 7, [2015] AC 2547; *R. (on the application of Barkas) v North Yorkshire CC* [2014] UKSC 31, [2015] AC 195. The long history of the right to roam also provides an example of this, on which see for example, Marion Shoard, *This Land is Our Land: The Struggle for Britain's Countryside* (Gaia Books 1997), although the policy documents surrounding the Countryside and Rights of Way Act 2000, whilst emphasising factors such as human health, also made some reference to emotional and spiritual factors.

for a Wild Law of property to properly take root we need to find opportunities in law to highlight the existence of connection with nature and support people to express intimacy with the land. Laws which are receptive to this intimacy and that take due account of close relationships with land will promote the connections which underpin Wild Law, as well as being a feature of a reformed law of Wild property.

4.4 Facilitating connection – access to nature

Alongside learning to better accommodate connection with nature and land, the law has an important role in facilitating the experiences in nature that are needed for children and young people to develop connection with nature and to maintain it as adults. Whilst access to land for recreational purposes has improved to some extent,¹⁴² opportunities for many children to access natural spaces appear limited. Children in developed countries such as the UK are spending far less time in nature than previous generations,¹⁴³ leading to fears not only for their health and wellbeing but for their relationship with the natural world.¹⁴⁴ Whether urban or rural, opportunities for children to play and spend time outside in Britain have been drastically limited over recent decades, in part due to

¹⁴² E.g. s.2(1) Countryside and Rights of Way Act 2000

¹⁴³ Richard Louv, *Last Child in the Woods: Saving our children from nature-deficit disorder* (Atlantic Books 2010) (on the US); England Marketing, *Childhood and Nature: A Survey on Changing Relationships with Nature Across Generations*, England Marketing for Natural England, 2009 (on the UK) <<http://publications.naturalengland.org.uk/publication/5853658314964992>> accessed 13 October 2015

¹⁴⁴ Kings College, 'Understanding the diverse benefits of learning in natural environments' (*Natural England*, 2011) < <http://publications.naturalengland.org.uk/publication/4524600415223808>> accessed 15 January 2016; MacFarlane (n 108) 323 (noting changes in 'environmental literacy' of children)

concerns over children's safety and perceptions of increased litigiousness,¹⁴⁵ but also a reduction of parental time available for such activities as many parents work.¹⁴⁶ Those who are least likely to spend time in the natural environment are children living in urban areas,¹⁴⁷ those in deprived areas and those of Black, Asian or other minority ethnic backgrounds,¹⁴⁸ a situation in which the lack of available local green space appears to be significant.¹⁴⁹ If adults in industrialised societies are already disconnected from nature,¹⁵⁰ then this evidence regarding the next generation presents a real challenge to the objective of ecocentrism. Without freedom to access green places to observe, play and to weave their imagination with nature,¹⁵¹ both the children themselves and society will be impoverished by the ongoing perception of nature as 'other', separate and servile.

Evidently, this is not a problem solely attributable to a failure of the law to ensure access. Nevertheless, the law could better support the kind of access which might benefit children and young people through, for example, ensuring that schools are obliged to make pupils' access to natural space

¹⁴⁵ England Marketing for Natural England, (n 143); Liz O'Brien and Richard Murray, 'A Marvellous Opportunity for Children to Learn' (Joint report of Forestry Commission and the New Economics Foundation 2006) <<http://forestry.gov.uk/fr/infd-5z3jvz>> accessed 14 January 2016; Liz O'Brien and Richard Murray, *Forest School and its Impacts on Young Children: case studies in Britain* (2007) 6 *Urban Forestry and Urban Greening* 249-65; Sara Knight, *Forest School and Outdoor Learning in the Early Years* (Sage 2013) 38-41

¹⁴⁶ Helena Howe and Janet Boddy, 'Children's perspective on Forest School: an exploratory study' (2015) (on file with the authors)

¹⁴⁷ Kings College (n 144)

¹⁴⁸ Anne Hunt, Jim Burt and Duncan Stewart, *Monitor of Engagement with the Natural Environment: a pilot for an indicator of visits to the natural environment by children - interim findings from Year 1 (March 2013 to February 2014)* (Natural England Commissioned Reports Number 166, 2015)

¹⁴⁹ Ibid.

¹⁵⁰ A premise reflected throughout this article but for further discussion see Restall and Conrad (n 5) 265

¹⁵¹ MacFarlane (n 108) 326

a priority in decisions about the use of their land. Whilst there is a strong policy presumption against schools selling off playing fields,¹⁵² large numbers have taken advantage of the ability to treat the land as a capital asset.¹⁵³ Although reasons for disposal are required,¹⁵⁴ the law still permits the prioritising of financial gain over the interests of the land – which will often be built on – and, in many cases, over the interests of the pupils in accessing natural (as opposed to merely recreational) space.¹⁵⁵ Similarly, the legal framework governing local councils’ retention and maintenance of public parks seems inadequate.¹⁵⁶ Even children who live near public green spaces may not have truly effective access to nature if the park feels dangerous or unwelcoming. Whilst selling off parks to private developers who charge for access, or failing to control anti-social use of the space, may be understandable in the face of severe cuts in government funding it is a short-term solution which illustrates the failure of the law to safeguard access and recognise the importance of connection.¹⁵⁷ Whilst acknowledging that funding is limited, the law could still oblige councils to provide green space, even if that were met by using innovative models, such as partnerships with non-profit making groups.¹⁵⁸ The law may also

¹⁵² s. 77 School Standards and Framework Act (SSFA) 1998

¹⁵³ Education Funding Agency, ‘Decisions on the disposal of school land’ (2016) available at: <https://www.gov.uk/government/publications/school-land-decisions-about-disposals/decisions-on-the-disposal-of-school-land> accessed 1 March 2016

¹⁵⁴ Consent is required under s.77(3) SSFA 1998

¹⁵⁵ Education Funding Agency (n 153)

¹⁵⁶ Ed Davey, ‘Parks, playgrounds and pitches sold by London councils’ BBC News, 8 March 2012 available at: <http://www.bbc.co.uk/news/uk-england-london-17250159> accessed 15 March 2016

¹⁵⁷ Rebecca Radcliffe, ‘Children are being priced out by pay to play in public spaces’ The Observer, 13 December 2015 available at: <http://www.theguardian.com/cities/2015/dec/13/parents-protest-pay-to-play-parks-privatising-green-spaces> accessed: 15 March 2016

¹⁵⁸ Heritage Lottery Fund, ‘State of UK public parks 2014’ (2014) available at: <https://www.hlf.org.uk/about-us/media-centre/press-releases/public-parks-under-threat> accessed 15 March 2016

foster access by incorporating natural play areas in development planning.¹⁵⁹ Here the mutually reinforcing character of the transition to an ecocentric legal system and the emergence of a Wild Law of property becomes apparent: the more connection with nature is recognised and prioritised in decisions regarding access to land, the more such connection can flourish and provide the receptive environment for further change.

The recent 'wellbeing' agenda in the UK, focuses on the importance of reconnecting people to nature for their health and wellbeing.¹⁶⁰ The coalition Government recognised the importance of connection with nature for children and young people particularly and expressed its commitment to ensuring access to natural places in order to facilitate these connections.¹⁶¹ This is highly significant for placing connection on the policy agenda but it remains to be seen whether real action results or whether access to natural spaces for children to play continues to be lost.¹⁶² Moreover, the wellbeing agenda fails to capture the full meaning of connection. Whilst there is recognition of our obligations to the environment, the primary focus is still what humans can obtain from nature and a failure to reflect fully the relational elements of connection with nature. Thus, although this is a step in the right direction, the task remains to find effective ways to foster the connection with nature which will help motivate and inform the initial stages of transition to a Wild Law of property.

¹⁵⁹ Through the use of local authority guidance on including conditions under s. 70(1) Town and Country Planning Act 1990

¹⁶⁰ For example, RSPB and The Wildlife Trusts, *A Nature and Wellbeing Act: A green paper from the Wildlife Trusts and the RSPB* (2015)

¹⁶¹ Department of the Environment, Food and Rural Affairs, *The Natural Choice: securing the value of nature* (White Paper, Cm. 8082, 2011) Ch. 4

¹⁶² The agenda behind the policy may be questioned, e.g. Evangelina Apostolopoulou and William M. Adams, 'Neoliberal Capitalism and Conservation in the Post-Crisis Era' (2015) 47 *Antipode* 35

5. The role of education initiatives: developing a Wild education?

5.1 Wilding education through connection with nature

*'The language of the universe is primarily experiential. It speaks to us in the language of hot and cold, beauty and fear, patterns of events, symbols and associations. However we must engage to 'hear' this language...'*¹⁶³

In light of the importance of connection with nature for the emergence of a Wild Law of property and the apparent lack of experiences in nature which might forge that connection, we need to explore alternative approaches to nurturing connection with nature in children and young people. In addition to addressing broader causes of children's inability to access nature we need to take full advantage of opportunities to enable children to foster their connection with nature. Thus the focus of this final part is on how to do this in industrialised societies.

Environmental education is central to enabling and empowering young people to engage with environmental injustice.¹⁶⁴ As such, the UN recognises environmental education as a vital tool in the promotion of sustainable development.¹⁶⁵ Within an analysis of the incorporation of ideas of sustainability into legal education, Holder identifies three categories: 'ecological intelligence', 'sustainability literacy' and 'education for sustainable development' (ESD).¹⁶⁶ Although writing in the Higher Education context, these categories can be applied to earlier educational stages and are used to frame the discussion here. These categories lie on a scale which expresses the extent to which the

¹⁶³ Cullinan (n 1) 128

¹⁶⁴ For example, Bronwyn Hayward, *Children, Citizenship and Environment: Nurturing a democratic imagination in a changing world* (Routledge 2012); Julie Davis and Sue Elliott, *Research in Early Childhood Education for Sustainability* (Routledge 2014)

¹⁶⁵ UNESCO, UN Decade for Sustainable Development 2005-2014 (2005)

¹⁶⁶ Holder (n 8)

ideology and pedagogy pursued by different forms of environmental education are likely to engender legal and social reform. The latter two categories in the hierarchy– ‘sustainability literacy’ and ESD - are less radical than that of ‘ecological intelligence’.¹⁶⁷ Sustainability literacy provides the skills, attitudes and competencies required for transition to an ecologically sustainable, post-carbon world. These include combined practical and intellectual knowledge, such as permaculture, principles of ecology and green technologies, alongside strategies for critical evaluation of existing values, institutions and discourses.¹⁶⁸ ESD on the other hand, incorporates learning about sustainable development within existing forms of education provision. It is less likely to alter the status quo, in part because the central principle of sustainable development is capable of accommodating the existing emphasis on economic growth, but also because it tends to be taught within traditional disciplinary pockets and be concerned more with personal development of the individual than with wider social or legal change.¹⁶⁹

It is those forms of education which can be categorized as promoting ‘ecological intelligence’, discussed below, that are arguably the most significant in fostering connection with nature and thus the emergence and development of Wild Law. But programmes which encourage sustainability literacy – and to some extent ESD – may have a role to play in the promotion of Wild Law as they support young people’s understanding of ecology, as well as their sense of civic responsibility and the sense of agency needed for participation in Earth Democracy. As Burdon points out, focusing on the idea of anthropocentrism is problematic to the extent that ‘it ignores structural forms that perpetuate exploitation independent of a particular philosophical worldview’, specifically industrial capitalism.¹⁷⁰ One of the ways in which Earth Jurisprudence seeks to ‘...catalyse a paradigm shift in law from an

¹⁶⁷ Ibid.

¹⁶⁸ Ibid., 547-548

¹⁶⁹ Ibid., 548-549

¹⁷⁰ Burdon, ‘Earth Jurisprudence and the Project of Democracy’ in Maloney and Burdon (n 1) 21

anthropocentric/growth paradigm and toward the ecocentric concept of ‘Earth Community’’,¹⁷¹ is through the Earth Democracy movement which envisages enhanced public participation and deeper forms of democracy, with the aim of shifting decision making power away from those operating under the constraints of existing anthropocentric capitalist structures.¹⁷² In addition to seeking top-down legal change, the Earth Democracy project therefore encourages alternative democratic processes, local and grass-roots public participation and actions that promote stronger environmental citizenship.¹⁷³ The understanding, skills and aptitudes forged through programmes which enhance sustainability literacy are relevant here as supportive of an empowered and active citizenry capable of effective participation in these social movements. Educational experiences which provide opportunities for exercising control and autonomy which assist in fostering children’s sense of agency, alongside experiences of participatory democracy and practical justice,¹⁷⁴ will enable them to better participate in processes of change.¹⁷⁵ But whilst these skills and aptitudes are important in facilitating

¹⁷¹ Ibid., 24

¹⁷² Ibid., 25-27; Samuel Alexander, ‘Wild Law from below: examining the anarchist challenge to Earth Jurisprudence’ in Maloney and Burdon (n 1) 32

¹⁷³ Cullinan (n 1) 155, 163; Hoskens (n 117); Burdon (n 170); Burdon, 2015 (n 1). This grass-roots pressure is generally considered to work through traditional democratic and legal channels, although for Alexander, a better approach is the development of customary Wild Laws which operate beneath existing positive laws and which would come over time to change social and legal norms, Alexander (n 172)

¹⁷⁴ Hayward (n 164)

¹⁷⁵ Louise Chawla and Debra Flanders Cushing, ‘Education for strategic environmental behaviour’ (2007) 13 *Environmental Education Research* 437-452, 442; Sue Elliott, ‘Children in the Natural World’ in Julie Davis (ed.), *Young Children and the Environment: Early Education for Sustainability* (CUP 2014) 47. Whether these are existing movements or participatory opportunities developed under the new governance models of Earth Jurisprudence. Presently, opportunities for children and young people’s participation in environmental decision-making is restricted, Hayward (n 164); Elisabeth Barratt Hacking, Robert Barratt and William Scott, ‘Engaging

effective participation, connection with nature also plays a crucial role as a motivating force for participation in collective political action.¹⁷⁶ Developing a connection with nature, particularly through attachment to a local place, provides a starting point for engagement with environmental issues at a level which is not too overwhelming and distant -conceptually and geographically - from the young person.¹⁷⁷

From the perspective of connection with nature, environmental education which is classroom-bound, subject-focused and concerned with global environmental problems has obvious limitations. Education for the fostering of a real connection with nature and a Wild Law of property requires the grounded, experiential learning about nature which Holder identifies as 'ecological intelligence'¹⁷⁸ and which echoes the relationality approach to land and nature discussed in sections 3.3 and 4.2 above. This kind of education provides appreciation of the 'relations and connections which exists between people and environments'¹⁷⁹ which by opening up broader understandings of community relationship with environments, 'provide a strong motivation for action'¹⁸⁰ and is 'capable of forcing the pace of

Children: research issues around participation and environmental learning' (2007) 13 *Environmental Education Research* 529-544

¹⁷⁶ Chawla (n 122); Chawla and Flanders Cushing (n 175); S. Collado, J. A. Corraliza, H. Staats, M. Ruiz, 'Effect of frequency and mode of contact with nature on children's self-reported ecological behaviors' (2015) 41 *Journal of Environmental Psychology* 65-73

¹⁷⁷ Hayward (n 164) 96-97 (drawing on the work of David Sobel, *Beyond ecophobia: Reclaiming the heart in nature education* (Orion Society 1996) and of Kate Burningham and Diana Thrush, "'Rainforests are a long way from here:'" *The environmental concerns of disadvantaged groups*' (Joseph Rowntree Foundation 2001); Elliott (n 175)

¹⁷⁸ Holder (n 8) 545-456

¹⁷⁹ Ibid. 547

¹⁸⁰ Ibid. 546

change in society, towards a new sustainability paradigm'.¹⁸¹ This is particularly significant when seen against a backdrop of limited opportunity to play in natural spaces for so many children both outside and during school. Whilst short term immersive experiences, such as trips for a day or a week to a nature reserve or activity centre, may enhance knowledge of the environment and create an experience of enjoyment of being outside, its short term nature is not necessarily the most appropriate for nurturing a deep sense of connectedness. The more appropriate initiatives provide longer term – and perhaps more 'everyday' – experiences in natural space.

5.2 Forest School as an emerging form of Wild property education

One form of education which may be well-placed to enable children and young people to rebuild their relationship with nature and promote the conditions for the emergence of a Wild Law of property is known in the UK as 'Forest School.' Inspired by practices in Scandinavia,¹⁸² the term describes an outdoor learning experience which is not capable of precise definition but which accords with certain recognised principles.¹⁸³ Forest School provides an experience different to most other forms of environmental education because it involves regular sessions at a particular woodland site or other natural site with trees, and takes place in all weathers.¹⁸⁴ Notably, in contrast to the majority of other outdoor environmental education experiences, Forest School extends over a significant

¹⁸¹ Ibid. 547

¹⁸² Knight (n 145) 4-6

¹⁸³ Knight (n 145) 16; Forest School Association, 'Full principles and criteria for good practice' <<http://www.forestschoollassociation.org/full-principles-and-criteria-for-good-practice/>> accessed 14 January 2016

¹⁸⁴ Or other natural settings, for example Sussex Wildlife Trusts' 'Wild Beach' project, <<https://sussexwildlifetrust.org.uk/what-we-do/environmental-education/wild-beach>> accessed 15 March 2016; Forest School Association (n 183)

period of time. However, there is no requirement that schools provide experiences of learning in natural environments.¹⁸⁵ In some cases, Forest School is provided by schools but for many children it is an extra-curricular activity run privately by a local Wildlife Trust or practitioner. Where provided by a school, significant resources are required to support the level of knowledge, confidence and access to appropriate land needed because Forest School is very different from standard educational provision and must be facilitated by a qualified leader.¹⁸⁶ Forest School is significant because by promoting embodied, experiential enquiry, undertaken in natural places, over significant periods of time,¹⁸⁷ it appears to provide experiences capable of fostering a connection with nature.¹⁸⁸ Moreover, the characteristics of Forest School reflect the 'radical' forms of environmental education identified by Holder as fostering ecologically intelligent young people whose appreciation of their relationship with the wider Earth Community and a motivation to act with reference to the Community interest makes a strong contribution to the emergence of a Wild Law of property.

¹⁸⁵ An objective which appears to be further forward in Scotland where the language is of 'entitlement' to learn outdoors, experiences of which 'must' be provided, Education Scotland, 'Curriculum for excellence through outdoor learning' (Learning and Teaching Scotland 2010). As opposed to the rest of the UK where the aim is 'removal of barriers' where schools want to teach in natural environments, DEFRA, n. 161, Annex 1

¹⁸⁶ See for example, Plymouth University's Natural Connections Demonstration Project <<https://naturalconnectionsblog.wordpress.com/2015/11/17/a-special-place-to-learn/>> accessed 25 November 2015, Forest School Association (n 183); Knight (n 145)

¹⁸⁷ The kind of learning processes described in Holder (n 8) 546

¹⁸⁸ Above, 4.1, cf. David F. Uzzell, Adam Rutland and David Whistance, 'Questioning Values in Environmental Education' in Yvonne Guerrier, Nicholas Alexander, Jonathan Chase and Martin O'Brien (eds.), *Values and the Environment* (John Wiley and Sons 1995)

Whilst fostering a connection with nature is one of the aims of Forest School,¹⁸⁹ little evaluation has so far been undertaken as to its success, although evidence of positive links is emerging.¹⁹⁰ Nevertheless, Forest School seems to be particularly well-placed to contribute to the kind of relationship with place which underpins a Wild law of property. To the extent that Forest School provision may often be primarily focused on outcomes unrelated to the environment, such as personal and social development,¹⁹¹ it does not focus on ‘the way nature works’ as much as the ‘ecological intelligence’ agenda might advocate.¹⁹² However, Forest School is aimed at primary school age children who may learn a lot about nature through these experiences and personal development can include nurturing their relationship with the natural world. The time in the woods and activities, such as wood-gathering, insect identification and green wood-working, enable learning about the interplay of natural systems, a heightened awareness of ecological issues and a respectful relationship with nature.¹⁹³ Good Forest School practice promotes an understanding of the implications of human action on the land. Responsibilities to the site are an integral part of the experience and learned through active processes, such as choosing which wood to burn and which to cut, so as not to compromise its ecological integrity.¹⁹⁴ In this way, Forest School begins to embed the links between responsibilities for land with entitlements to use it, as befits a more ecocentric system of property.¹⁹⁵ Through opportunities for risky play but also for warmth and comfort by the fire, the woods can be

¹⁸⁹ Forest School Association (n 183)

¹⁹⁰ See for example, N.D. Ridgers, Z. R. Knowles & J. Sayers, ‘Encouraging play in the natural environment: a child-focused case study of Forest School’ (2012) 10 *Children’s Geographies* 49-65, 60; Frances Harris, ‘The nature of learning at Forest School: practitioners’ perspectives’ *Education 3-13* (2015) 1-20,

¹⁹¹ Harris (n. 190) 9-10

¹⁹² Holder (n 8) 545

¹⁹³ O’Brien and Murray 2006 (n 145) 21, 40; 2007 (n 145) 259; Ridgers et al (n 190) 60; Harris (n 190) 10-13

¹⁹⁴ Knight (n 145) 17; Howe and Boddy (n 146)

¹⁹⁵ Graham (n 56)

seen to become a participant in the child's experiences, part of the Forest School community, and not simply a resource or backdrop against which human life is enacted. By participating in Forest School activities, children also develop confidence in their knowledge about nature, in their own abilities and skills to work with others and to complete tasks and – on a small scale – to effect change in the natural environment.¹⁹⁶ Moreover, Forest School also involves teachers, parents and other significant adults, as helpers or visitors to the site.¹⁹⁷ This is not only significant for the development of connection with nature but may also be valuable in terms of bringing the relationship with nature into the families' everyday lives.¹⁹⁸

The centrality of 'place' in Forest School is a particularly significant feature of the experience providing learner-participants with the opportunity to develop a relationship with a particular place that becomes 'special'.¹⁹⁹ That the site is not somewhere the children routinely learn is important in creating a sense of wonder and excitement and this, alongside the learner-led ethos, contributes to challenging children's assumptions and socially constructed understanding of the forest and nature.²⁰⁰ It is possible to theorise that the comparative freedom to explore a space intuitively and intimately over many hours and weeks helps build a relationship with the site, even a sense of place-love.²⁰¹

¹⁹⁶ Learning what Bekoff calls 'wild justice', M. Bekoff, *Rewilding Our Hearts, Building Pathways of Compassion Co-existence* (New World Library 2014) 128

¹⁹⁷ O'Brien and Murray 2006 (n 145) 42

¹⁹⁸ O'Brien and Murray, 2007 (n 145)

¹⁹⁹ Knight (n 145) 2

²⁰⁰ Mark Leather, 'Seeing the Wood from the Trees: constructionism and constructivism for outdoor and experiential education' (University of Edinburgh, 2012) <http://oeandphilosophy2012.newharbour.co.uk/wp-content/uploads/2012/04/Mark-Leather.pdf> accessed 15 January 2016

²⁰¹ Or 'topophilia', MacFarlane (n 108) 323 (citing Gaston Bachelard, *The Poetics of Space* (Beacon Press 1992); Layard, 2010 (n 107) 415 (drawing on Yi-Fu Tuan, *Space and Place: The Perspective of Experience* (University of Minnesota Press 1997))

Evidence indicates that through such experiences – or performance of the activities and rituals of Forest School - the place comprising 'Forest School' is constructed. Moreover, some relationship to this place – even some sense of 'ownership' of it - is acquired by participants.²⁰² However, it is suggested that this is not 'ownership' in the sense of dominion but a form of stewardship borne of connection; a sense of understanding and caring about the land.²⁰³ Nor is this a claim to place represented in accordance with the liberal tradition of possession, rather one expressed through richer and more complex means of interaction with the natural world.²⁰⁴ In these sessions the children are using all their senses to forge an understanding of nature and a relationship with land as they climb, fall, dig, build dens and lay fires.²⁰⁵ By engaging 'hands and heart' in the way advocated by Earth Jurisprudence,²⁰⁶ they are reconnecting with the land and learning to know its richness and value whilst also constructing understandings of the issues inherent in environmental relations.²⁰⁷ If, as Blomley²⁰⁸ suggests, the notion of 'performing' comprises 'active forms of engagement, communication and interaction that help constitute the world in particular ways',²⁰⁹ then Forest School participation can contribute to performing a more connected relationship with land. To the

²⁰² Harris (n 190) 12-13. On the construction of place see for example, Nicholas Blomley, 'Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid' (2003) 93 *Annals of the Association of American Geographers* 121-141; Nicholas Blomley, 'Landscapes of Property' (1998) 32 *Law & Society Review* 567-612, 581

²⁰³ O'Brien and Murray 2006 (n 145) 21, 40-41; 2007 (n 145) 259; Howe and Boddy (n 146)

²⁰⁴ Blomley 1998 (n 202) 572

²⁰⁵ As opposed to more technocratic models of knowledge transfer, Jenneth Parker, 'Enabling Morally Reflective Communities: Towards a Resolution of the Democratic Dilemma of Environmental Values in Policy' in Guerrier et al (n 188) 37-39. See also Harris (n 190) 11.

²⁰⁶ Cullinan (n 1) 123

²⁰⁷ Holder (n 8) 546

²⁰⁸ Nicholas Blomley, 'Performing Property: Making the World' (2013) 26 *Can. J.L. & Juris.* 23

²⁰⁹ Ibid. 33

extent that property is constructed through such performance, then Forest School may contribute, in turn, to the production of a different concept of property. One in which the nature and capacities of land are integral and in which knowing and caring about the land we use is the norm. Educating children to enjoy relationships of love and respect with land is one way to promote a property law that, in moving beyond a traditional rights-based framework, recognises the centrality of the land itself to decision-making, better accommodates the complexities of the human-land relationship and imposes obligations that ensure appropriate environmental protection.

Initiatives such as Forest School provide opportunities for children and young people who may well not otherwise experience time in nature or a relationship with a natural place. This is not to say that Forest School provides perfect conditions for developing a connection with nature, or for the development of ecological intelligence. It may be, for example, that some Forest School experiences are too limited in time or too activity-focused for strong bonds to develop. It may also be argued that Forest School could better promote ecological intelligence by placing more direct emphasis on the environment, for instance. Nevertheless, although there might be room for improvement, Forest School would seem to make an effective contribution to the forming of special relationships with place which gives rise to a way of relating to the land which is fundamental to the Earth Jurisprudence project and a Wild Law of property. In this way, it can be seen as an emerging form of primary Wild education nurturing the capable stewards and motivated reformers needed for the success of the Wild Law project.²¹⁰ Moreover, Forest School provision itself may become a more immediate driver of change to property rules or frameworks for decision-making. Forest School, whether delivered by school or community group, requires access to natural spaces. Thus recognition of the value of Forest School - and the significance of access to nature generally - creates pressure to re-evaluate the law and policy on schools' and local authority provision of green spaces as well as wider recreational access to land and water. It may also provide impetus for development of further incentives to encourage

²¹⁰ On which a reformed secondary and tertiary provision must build, Holder (n 8) and Graham (n 56)

private landowners to provide land for the running of Forest Schools or other outdoor experiences. Perhaps offering space for such activities may also give landowners the opportunity to rediscover some of their own connection to nature which may, in turn, influence their future land management decisions.

6. Conclusion

This article is not a call for a return to alleged halcyon days in which children gambolled in meadows in the declining sun, or a denial of the complexity of altering the legal regulation of our relationship with land. The neoliberal capitalist agenda which informs the evolution of so many institutions and policies makes the transition towards an ecocentric property law a hugely challenging and lengthy task. If we are to proceed then we need to recognise that such transition relies, in part, on the re-establishing of a connection with the natural world and re-assessing dominant narratives of our place in nature. And it needs everyone involved. Promoting the significance of connection with nature in land use policy and decision-making would be a start. But fostering the connection with nature, which many children are currently denied the opportunity to develop, is central. Experiential education initiatives, such as Forest School, play a crucial role in forming the foundations of a Wild education on which reform associated with Wild Law rests. This suggests that supporters of Wild Law should consider collaboration with providers of Forest School type initiatives, to provide practical support or shaping of the content. It also indicates that it is imperative we make better use of legal mechanisms to ensure children's access to nature. This may be through obligations on schools to provide – and perhaps share - natural spaces. It may even be that we require schools to provide some experience of learning in natural environments, preferably along the lines of Forest School, and that teacher training reflects this. It may also be that additional obligations on local authorities to ensure that land is available for recreation and educational activities are appropriate, as well as on private

landowners to better accommodate access. Only by providing the conditions for connection with nature now will we be able to create effective Wild Laws in the future.